



April 29, 2022

Ms. Julie Hanlon-Bolton
Office of Associate Chief Counsel (Income Tax and Accounting)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Proposed Qualified Opportunity Funds Decertification Regulations

Dear Ms. Hanlon-Bolton:

Please see attached proposed regulatory language for decertification of Qualified Opportunity Funds (QOFs) in response to your email request on March 11, 2020. Our proposal reflects the collective comments of our members – nearly 100 organizations representing a cross section of opportunity zone (OZ) stakeholders.

We agree with the Treasury and the IRS that certain actions or lack of actions should lead to decertification of funds and we encourage that any rules around decertification be clearly demarcated. We believe that involuntary decertification should only be warranted if a QOF exhibits willful and continuous noncompliance with the rules for an extended period of time.

The OZ incentive has shown a promising trajectory since the final regulations were issued in December 2019 and we think that there is good reason to believe that the reach, diversity, and economic impacts of OZ investment will only continue to increase in the coming years as the administration further refines the incentive. We respectfully request that great care be taken to ensure that any rules pertaining to decertification do not suppress this momentum and thus the flow of capital that is desperately needed in these disadvantaged communities.

We appreciate the opportunity to submit our recommendations. We commend Treasury and IRS for their continuing efforts to improve and clarify tax guidance for the OZ incentive in order to ensure its continuing success.

Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance. We would be happy to discuss our comments in further detail. Thank you in advance for your time and consideration.

Yours very truly,

Novogradac & Company LLP

By

John S. Sciarretti, Partner



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Novogradac Opportunity Zones Working Group

Attachment:

cc: Tom West, Deputy Assistant Secretary for Domestic Business Tax;
Krishna Vallabhaneni, Tax Legislative Counsel;
Michael Novey, Associate Tax Legislative Counsel;
Brett York, Deputy Tax Legislative Counsel;
Colin Campbell, Attorney-Advisor

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1.1400Z2(d)-1(a)(3): Self-decertification of a QOF. If a QOF chooses to self-decertify as a QOF, the following rules apply:

(i) *Form and manner.* The self-decertification must be effected in such form and manner as may be prescribed by the Commissioner in IRS forms or instructions or in publications or guidance published in the Internal Revenue Bulletin (see §§ 601.601(d)(2) and 601.602 of this chapter).

(ii) *Time.* The self-decertification becomes effective at the beginning of the month following the month specified by the taxpayer, which month must not be earlier than the month in which the taxpayer files its self-decertification as provided in paragraph (a)(3)(i) of this section and not be later than the end of the taxable year of the QOF.

(iii) A QOF that is self-decertified is ineligible to certify as a QOF for five years following the month in which the self-decertification becomes effective.

(iv) The self-decertification can be cancelled at any time prior to the end of the taxable year of the QOF, in which case the self-decertification will be ignored.

1.1400Z2(d)-1(a)(4): Involuntary decertification of a QOF. The IRS may, in its discretion, decertify a QOF if the QOF does not satisfy the investment standard on four (4) consecutive testing dates due to willful neglect.

(i) *Willful Neglect.* Willful neglect means conscious intentional failure to comply with the investment standard, or reckless indifference to such investment standard.

(ii) *Significant factors.* IRS will consider the following factors in determining whether the failure was due to willful neglect and no one factor shall be determinative:

- A. The amount and percentage of the shortfall.
- B. The steps taken to purchase or sell qualified opportunity zone property or property that is not qualified opportunity zone property.
- C. Whether the factors leading to the failure were under the control of the QOF or could be reasonably foreseen at the time of the original qualifying investment in the QOF.
- D. Any other relevant information.

(iii) *Safe Harbors.* The following factors are not considered to be willful neglect:

- A. Failure to meet the investment standard as a result of a failure by an entity to satisfy the tests under section 1400Z-2(d)(3)(A) and the QOF reasonably expects, at the time the QOF made the investment in the entity, that the entity will satisfy the requirements to be a qualified opportunity zone business throughout the entire period of the investment and the QOF does not have control of the entity. Control for this purpose is defined in section 1.45D-1(d)(6)(ii)(B) and (C).

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B. A QOF that holds an average of at least 50 percent of its assets in qualified opportunity zone property over the four consecutive testing dates in paragraph (a)(4).

(iii) *Time.* If any QOF is decertified under the rules set forth in this sub paragraph (4), then the decertification is effective as of the first month following the fourth testing date that it did not satisfy the investment standard. In the event that a QOF never satisfied the investment standard, the decertification is effective as of the first month of certification and any penalties previously assessed for not satisfying the investment standard are abated.

(iv) The rules of self-decertification under paragraph (a)(3) of this section are not applicable to QOFs determined to be involuntarily decertified under paragraph (a)(4) of this section.